

No. 9(1)81-6 Lab/10676.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s Devis and White India Ltd., Faridabad.

BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 335 of 1978

Between

THE WORKMEN AND THE MANAGEMENT OF M/S DEVIS AND WHITE INDIA LTD.,
FARIDABAD

Present—

Shri S.R. Gupta, for the workmen.
Shri R.C. Sharma, for the management.

AWARD

By order No. ID/FD/65-78/37826, dated 16th August, 1978 the Governor of Haryana referred the following disputes between the management of M/s Devis and White India Ltd., Faridabad and its workmen to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

- (1) Whether the minimum wages of the workmen should be fixed @ 350 per month ? If so, with what details ?
- (2) Whether the workmen are entitled to the grant of bonus for the years 1975-76 and 1976-77 ? If so, with what details ?
- (3) Whether the workmen are entitled to the grant of dearness allowance ? If so, with what details ?
- (4) Whether the workmen are entitled to the grant of house rent allowance ? If so, with what details ?
- (5) Whether the workmen are entitled to the grant of washing allowance ? If so, with what details ?
- (6) Whether the workmen are entitled to any interim relief ? If so, with what details ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. After the pleadings the management filed a settlement which was challenged by the workmen, therefore following issues were framed by my predecessor on 15th November, 1979 :—

- (1) Whether the settlement is fair and just ?
- (2) Whether the settlement is legal ?
- (3) Whether the settlement has been properly and legally made and is binding on the parties ?
- (4) Whether the present Representative has locus-standi to challenge the settlement.

And the case was fixed for the evidence of the workmen who examined Shri Ramji Upadhyay, General Secretary as WW-1, Ramesh Lal workman as WW-2 and Shri Navneet Kumar workman as WW-3. The management did not examine any oral evidence. Arguments were heard. Now I give my finding on the issues.

Issues No. 1 to 4.—All the issues are inter-connected, therefore, these are taken together. WW-1 stated that he was working in the factory since 5th December, 1975. Demand notice Ex. W-1 was served upon the management. At the time of settlement Ex. M-1 no Government Officer was present. One Partap driver was transferred to Bombay over which there was strike in the factory. Thereafter a settlement was reached with the workmen to work in a discipline manner. Shri B.N. Malhotra Personnel Officer and Shri S.K. Sharma General Manager had called workmen one by one and get the settlement signed. They did not tell about the clauses of the settlement. In cross examination he stated that he was General Secretary of the union from 8th August, 1980. He admitted that the office holders described in the settlement were correctly recorded. There had been a strike in the factory in February, March 1979. He admitted that Shri Partap had left job in March, 1979. He did not know if the Dy. Labour Commissioner had called the office holders whose names were mentioned in the settlement. He was getting annual increment and dearness allowance. Out of the leaders of the settlement there was now only Shri Sohan Pal till working in the factory and others had left. His signature appear at serial number 57 at the settlement. WW-2 stated that he was working in the factory for the last five years. It was known to him that settlement Ex. M-1 was arrived at in July, 1979. He did not know the clauses of the settlement. Shri S.K. Sharma personnel Officer had asked him to sign the same. There was no other workman present. At the time of signature it was told to him that it concerned Shri Partap driver. There was no Government Officer present. In cross examination he admitted that Shri Partap had left in March, 1979. He admitted that there had been strike before his leaving the factory. He had signed the settlement after calling off the strike. The Dy. Labour

Commissioner had not called him. He admitted that Shri Bhandari Lal was President and Shri Sohan Pal General Secretary of the union at that time. WW-3 corroborated the statement of WW-1. In cross examination he admitted that the signatories with the settlement were leaders of the union but they were turned out of the union in July, 1979 and *ad hoc* committee was formed in August, 1979.

The learned representative for the management argued that the demand notice, dated 6th March, 1978 was served upon the management and the present reference was on the basis of that demand notice. Ex. M-1 was a conciliation settlement signed by the representatives of the workmen under section 36 of the Industrial Disputes Act read with rule 58. He cited 1961 I LLJ page 504, 1978 I LLJ page 487, 1965, I LLJ page 68 and 1979 Lab. I. C. page 585. On the other hand the learned representative for the workmen argued that there were six demands in the reference and during the pendency of the reference Ex. M-1 was arrived at. He further argued that no dispute was pending with Dy. Labour Commissioner, therefore, he had no power to hold proceedings. He referred 55 FJR page 278. He also argued that rule 58 was not complied and signatures of seven workmen appeared. He also drew my attention to the signatures sheet attached with the settlement and pointed out that there were no signatures at serial number 31, 39, 40, 43, 46, 47, 48, 68 and 96.

I have gone through the demand notice forming part of the present reference and find that it was signed by Shri Bhandari Lal President, Shri Rawat Vice President, Shri Sohan Pal General Secretary, Shri Padam Singh Joint Secretary, Shri Hoob Lal Assistant Cashier and Shri Suman Propaganda Secretary. The settlement is witnessed by the Dy. Labour Commissioner Faridabad and purported to be under section 12(3) of the I.D. Act. On behalf of the workmen it is signed by Shri Bhandari Lal President, Shri Sohan Pal General Secretary, Shri Padam Singh Joint Secretary, Shri Rawat Singh Vice President, Shri Chaman Lal Cashier and Shri Shiv Bhushan WW-1 has admitted in cross examination that at the time of settlement the workmen representative held the same office which show against their names in Ex. M-1. This fact is also admitted by WW-2 and WW-3. Under section 12(3) of the I.D. Act a settlement should be arrived at in the course of the conciliation proceedings and memorandum of settlement should be signed by the parties to the dispute. As regards the contention that the Dy. Labour Commissioner had no dispute before him this fact is belied by the statement of WW-1 who stated that a dispute about the transfer of Shri Partap driver had taken the shape of a strike in the factory. Thus there was dispute of strike before the Dy. Labour Commissioner at that time. However it is correct that the dispute giving rise to the present reference was not before him at that time and it cannot be called that the conciliation proceedings still subsisted. Under section 20(2)(b) and 20(2)(c) a conciliation proceeding shall be deemed to have concluded when failure report is received by the Government or a reference is made under section 10 during the pendency of conciliation proceedings, therefore, the present settlement Ex. M-1 cannot be called a settlement under section 12(3) of the I.D. Act. As regards the signatories of the settlement I find that they are the same who had submitted demand notice. Under rule 58 a settlement could be signed by the President and Secretary of a trade union of workmen or five representatives of workmen but in the present case Ex. M-1 was signed nearly by all the office holders who had signed demand notice giving rise to the present reference. The settlement arrived at between the parties without intervention of the Conciliation Officer was also a valid settlement under the I.D. Act. The Dy. Labour Commissioner was not examined to elaborate the circumstance under which he signed the settlement. I consider him to be a witness to the settlement. The settlement is, therefore, legal as entered by the union and the management in the presence of Dy. Labour Commissioner. It is a legal document and binding on all the workmen under section 18 of the I.D. Act because it was on behalf of the union of workmen. The settlement cannot turn invalid because of fresh election of the union after the settlement. None of the signatories had come in the witness box to challenge the settlement and the present workmen i.e., WW-1 to WW-3 have no *locus-standi* to challenge it. I decide all these issues accordingly.

The findings given by me on the issues above, the workmen are not entitled to any relief in this reference.

Dated 8th September, 1981

M.C. BHARDWAJ,

Presiding Officer,

Industrial Tribunal, Haryana, Faridabad.

No. 800, dated the 9th September, 1981.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,

Presiding Officer,

Industrial Tribunal, Haryana, Faridabad.